



STATE REPRESENTATIVE
Garey Bies
1ST ASSEMBLY DISTRICT

**Written Testimony of Representative Garey Bies
Assembly Committee on Urban and Local Affairs
Assembly Bill 489 – Access to Law Enforcement Records**

Good morning Chairperson Berceau and committee members, I appreciate the opportunity to submit my testimony in support of Assembly Bill 489, relating to public access to certain local government law enforcement records.

Assembly Bill 489 is a revised version of legislation I introduced last session at the request of the Winnebago County Sheriff. As a former Chief Deputy I understand well the concerns Sheriff Brooks has with loopholes in current law that may allow for the release of sensitive records including those related to ongoing investigations. The specific problem being addressed by AB 489 concerns information technology departments established for joint operation by multiple law enforcement agencies.

For example, let's say that Brown, Kewaunee and Door County Sheriff's departments establish a joint computer system for all three departments. Door County then is in the process of performing an investigation, the records for which are maintained by the joint IT department. A person, in an attempt to circumvent the Door County Sheriff's department could request the release of the records from the IT department, which might, in the case of an active investigation, inadvertently release the records.

Assembly Bill 489 establishes that IT departments are not custodians of law enforcement records.

Assembly Bill 489 differs from last session's legislation as it does not alter the definition of what is a public record and is narrowly drafted to apply only to information technology departments. In addition, at the request of the Department of Justice, we removed the language that directed the IT department to refer the records requestor to the appropriate custodian of the record. The reason for this change is because information technology department staff are not law enforcement officers, are not trained in law enforcement and should not be examining sensitive law enforcement records in an effort to make any determination about them, including what agency is the proper custodian of the records. Under AB 489, upon receiving a request for a law enforcement record, an IT department shall simply deny the request.

One point that I want to make sure is understood: **AB 489 does not change the law as to what records are available to the public.** Under current law, if a record is available to the public, AB 489 would not change that status. Again, if the record is open to the public now, it will be open to the public under 489. This bill is not about reducing what records are available to the public. This bill is about clarifying who is the proper custodian of records and to whom an open records request should be submitted.

Again, I'd like to thank Chairperson Berceau for scheduling AB 489 for a public hearing. Thank you and I would be happy to answer any questions that you may have.

First for Wisconsin!

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November 17, 2009

Representative Terese Berceau, Chair
Assembly Committee on Urban and Local Affairs
208 North, State Capitol
PO Box 8952
Madison, WI 53708

Dear Representative Berceau and Members of the Committee:

Thank you for the opportunity to comment on 2009 Assembly Bill 489 which amends Wisconsin's Open Records Law to stipulate that information technology units must deny requests for information relating to a law enforcement records. In other words, the bill recognizes that a local-government IT work unit is not considered to be the custodian of the law enforcement record.

The Wisconsin Newspaper Association has met with the primary sponsor and understands the intent of the proposal, particularly as it pertains to a multi-jurisdictional IT center such as a consolidated law-enforcement communications organization. However, we believe AB 489 as written could result in unintended consequences contrary to the overarching intent of the Open Records Law.

Put into everyday language, AB 489 simply says a public information request should be denied. End of story. And this is an unsatisfactory result in the context of Wisconsin's public records policy that strives for "...the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them" being available to the public.

AB 489 should be improved and made consistent with the policy intent of the Open Records Law by including a requirement for a responsible person in the local government IT unit to direct the requestor to the law-enforcement custodian who has the proper authority to grant access to the record or, in the alternative, provide an explanation of denial.

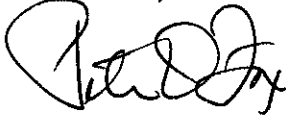
It is our understanding that the origins of this proposal lie partially in the complex and technological workings of local-government IT centers. Particularly for an IT center that serves multiple jurisdictions, it is important to maintain a clearly identified, unambiguous process to identify and request public records. Currently, AB 489 offers only a dead-end to public record requestors.

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While well intended, this proposal as written guarantees unnecessary confusion, delay, adversarial situations and legal expense – aspects no reasonable person would want.

AB 489 requires an amendment to address this deficiency. Until such time as that is addressed, WNA has no choice but to oppose this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter D. Fox", written over a large, stylized circular flourish.

Peter D. Fox
Executive Director

cc: WNA Board of Directors